



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**Annual Random Controlled Substances Testing Percentage Rate for Calendar Year 2016**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of program change.

**SUMMARY:** The FMCSA announces, pursuant to 49 CFR 382.305, that it is reducing the minimum annual percentage rate for random controlled substances testing for drivers of commercial motor vehicles (CMVs) requiring a commercial driver's license (CDL) from the current rate of 50 percent of the average number of driver positions to 25 percent of the average number of driver positions, effective in calendar year 2016.

The FMCSA Administrator has the discretion to decrease the minimum annual random testing percentage rate based on the reported positive random test rate for the entire motor carrier industry. Based on the controlled substances random test data in FMCSA's Management Information System (MIS) for calendar years 2011, 2012, and 2013, the positive rate for controlled substances random testing fell below the 1.0 percent threshold for 3 consecutive calendar years. As a result, the Agency will lower the controlled substances minimum annual percentage rate for random controlled substances testing to 25 percent of the average number of driver positions. In accordance with 49 CFR 382.305(e)(2) if , in the future, the reported positive rate for any calendar year is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

**DATES:** Effective January 1, 2016, the minimum annual percentage rate for random controlled substances testing, for drivers of commercial motor vehicles (CMVs) requiring a commercial driver's license (CDL), will be 25 percent.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Juan Moya, Drug and Alcohol Program Manager, Compliance Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590, 202-366-4844 or fmcsadrugandalcohol@dot.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

The final rule titled, "Controlled Substances and Alcohol Use and Testing," published August 17, 2001, (66 FR 43097), established the process by which the Agency determines whether the minimum annual percentage rate for random controlled substances testing should be increased or decreased. The final rule included a provision indicating that the decision on whether to increase or decrease the percentage rate would be based upon the motor carrier industry's overall positive random controlled substance test rate, as reported by motor carrier employers to FMCSA, pursuant to 49 CFR 382.403. Under this performance-based system, the testing rate was initially set at 50 percent. The FMCSA Administrator may, at his or her discretion, lower the minimum annual random controlled substances testing percentage rate to 25 percent when the industry-wide random controlled substances positive rate is less than 1.0 percent for two consecutive calendar years. 49 CFR 382.305(g). The new annual random testing percentage rate would then apply starting January 1 of the following calendar year. 49 CFR 382.305(f).

In accordance with 49 CFR 382.403, each calendar year FMCSA requires motor

carriers selected for the survey to submit their DOT drug and alcohol testing program results. Selected motor carriers are responsible for ensuring the completeness, accuracy, and timeliness of the data submitted. The survey requires motor carriers to provide information to the Agency on the number of random tests conducted and the corresponding positive rates.

For the 2013 survey, notices were sent out to 3,251 randomly selected motor carriers primarily via email and U.S. mail for those motor carriers with invalid or no email addresses. Of these forms, 2,236 were completed and returned to FMCSA, resulting in usable data from 1,654 carriers comprising of 497,270 CDL drivers based on the motor carriers' survey responses. Respondents providing non-usable data represent entities that are out of business, exempt, have no testing program in place, or belong to consortia that did not test any drivers for the carrier during 2013.

The estimated positive random controlled substance test rate in 2013 is 0.7 percent. The 95-percent confidence interval for this estimate ranges from 0.6–0.8 percent. In other words, if the survey were to be replicated, it would be expected that the confidence interval derived from each replication would contain the true usage rate in 95 out of 100 surveys. For 2011 and 2012, the estimated positive usage rate for drugs was estimated to be 0.9 percent and 0.6 percent, respectively.

For calendar year 2015, in order to ensure reliability of the data, the FMCSA Administrator made the decision to maintain the annual testing percentage rate at 50 percent and sought additional information related to drivers' positive test rates. Following a third consecutive calendar year of data reporting the positive rate below 1.0 percent FMCSA announces that the random controlled substances annual percentage

testing rate will change from 50 percent to 25 percent. The new minimum annual percentage rate for random drug testing will be effective January 1, 2016. This change reflects the sustained low positive test rate and will result in an estimated \$50 million in annual savings to motor carriers by requiring that fewer drivers be tested.

In accordance with 49 CFR 382.305(e)(2) if , in the future, the reported positive rate for any calendar year is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

**Minimum Annual Percentage Rates for Random Controlled Substances Testing for 2016**

Effective January 1, 2016, the minimum annual percentage rate for random controlled substances testing is 25 percent of the average number of driver positions. The minimum annual percentage rate for random alcohol testing will remain at 10 percent.

**Issued on:** December 17, 2015

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T. F. Scott Darling, III.  
Acting Administrator.

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